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February 9, 2006

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VIA COURIER

Federal Communications Commission
Office of Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek
236 Massachusetts Avenue, N.E., Suite 110
Washington, DC 20002

In re: *Closed Captioning and Video Description of Video Programming --
Implementation of Section 305 of the Telecommunications Act of 1996 -- Video
Programming Accessibility*


CGB-CC-0042 – Opposition of Telecommunications for the Deaf and Hard of
Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing
Consumer Advocacy Network, and Hearing Loss Association of America to the
Petition for Exemption from Closed Captioning Requirements Filed by United
Methodist Hour of MS, Inc.

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing Consumer Advocacy Network, and Hearing Loss Association of America hereby submit for filing in the above-captioned proceeding their opposition to the petition for exemption from the closed captioning requirements filed by United Methodist Hour of MS, Inc.

An original and two (2) copies of this filing are enclosed. Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed envelope provided. Should you have any questions concerning this matter, please do not hesitate to contact us.

Respectfully submitted,



Paul O. Gagnier
Troy F. Tanner

Their Counsel

Marlene H. Dortch, Secretary
February 9, 2006
Page 2

Enclosure

cc: via e-mail:

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Ms. Traci Randolph (CGAB)
Mr. Claude L. Stout (TDI)
Mr. Kelby N. Brick, Esq. (NAD)
Ms. Cheryl Heppner (DHHCAN)
Ms. Brenda Battat (HLAA)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning and Video Description)	
of Video Programming)	
)	CGB-CC-0042
Implementation of Section 305 of the)	
Telecommunications Act of 1996 --)	
)	
Video Programming Accessibility)	

**OPPOSITION OF TELECOMMUNICATIONS FOR THE DEAF AND HARD OF
HEARING, INC., NATIONAL ASSOCIATION OF THE DEAF, THE DEAF AND HARD
OF HEARING CONSUMER ADVOCACY NETWORK, AND THE HEARING LOSS
ASSOCIATION OF AMERICA TO
THE PETITION FOR EXEMPTION FROM CLOSED CAPTIONING REQUIREMENTS
FILED BY UNITED METHODIST HOUR OF MS, INC.**

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Dated: February 9, 2006

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**OPPOSITION TO THE PETITION FOR EXEMPTION FROM CLOSED
CAPTIONING REQUIREMENTS FILED BY
UNITED METHODIST HOUR OF MS, INC.**

I. INTRODUCTION

Telecommunications for the Deaf and Hard of Hearing, Inc., the National Association of the Deaf, the Deaf and Hard of Hearing Consumer Advocacy Network, and the Hearing Loss Association of America (together, "Commenters"), by their undersigned counsel, hereby submit their opposition to the petition for an exemption ("Petition") from the Commission's closed captioning requirements for the video program "Time That Makes The Difference," filed by the United Methodist Hour of MS, Inc. ("Petitioner"), the program's producer.

Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI") is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind, so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

Established in 1880, the National Association of the Deaf ("NAD") is the nation's oldest and largest nonprofit organization safeguarding the accessibility and civil rights of 28 million

deaf and hard of hearing Americans across a broad range of areas including education, employment, health care, and telecommunications. Primary areas of focus include grassroots advocacy and empowerment, policy development and research, legal assistance, captioned media, information and publications, and youth leadership.

The Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), established in 1993, serves as the national coalition of organizations¹ representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

The Hearing Loss Association of America (“HLAA”) is the nation's foremost consumer organization representing people with hearing loss. HLAA's national support network includes an office in the Washington D.C. area, 13 state organizations, and 250 local chapters. The HLAA mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. HLAA provides cutting edge information to consumers, professionals and family members through their website, www.hearingloss.org, their award –winning publication, *Hearing Loss*, and hearing accessible national and regional conventions. HLAA impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and global level.

^{1/} The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

Commenters fully support the creation of programming to address the diversity of interests and views of the American public, including programs that derive their inspiration from addressing religious and spiritual matters. Commenters respectfully submit, however, that the Petition does not meet the statutory requirements necessary to support an exemption from the closed captioning rules or Petitioner's contention that compliance with the closed captioning requirements would impose an undue burden.² As set forth below, Petitioner has provided insufficient information to establish that the legal standard for granting the Petition has been met. Petitioner, as a television programming producer and distributor, fails to qualify for an exemption under Section 79.1(d)(11), which applies to broadcasters and cable operators who actually transmit or carry television channels on their respective networks. Commenters therefore respectfully oppose grant of the Petition.

II. THE LEGAL STANDARD FOR GRANTING A PETITION FOR EXEMPTION

Section 713 of the Communications Act of 1934, as amended, generally requires that video programming be closed captioned, regardless of distribution technologies, to ensure that it is accessible to persons with hearing disabilities.³ The Commission has the authority to grant a petition for an exemption from the closed captioning requirements upon a showing that the requirements would impose an undue burden on the video programming provider or video owner.⁴ Congress defined "undue burden" to mean "significant difficulty or expense."⁵

A petition seeking a waiver of the captioning rules must demonstrate that compliance would result in an undue burden within the meaning of Section 713(e) and Section 79.1(f) of the Commission's rules.⁶ Section 713 requires the Commission to consider four factors when determining whether the closed captioning requirements will impose an undue burden: (1) the

^{2/} 47 U.S.C. § 613(e).

^{3/} *Id.*

^{4/} *Id.*

^{5/} *Id.*

nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.⁷

Section 79.1(f) of the Commission's rules sets forth the Commission's procedures for seeking an exemption from the closed captioning requirements on the basis that compliance would impose an undue burden.⁸ A petition for an exemption from the closed captioning requirements must be supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden.⁹ Such petition must contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on by the petitioner.¹⁰ It must also describe any available alternatives that might constitute a reasonable substitute for the captioning requirements.¹¹

III. PETITIONER HAS PRESENTED INSUFFICIENT INFORMATION TO DEMONSTRATE THAT COMPLIANCE WITH THE CAPTIONING REQUIREMENT WOULD IMPOSE AN UNDUE BURDEN

Petitioner requests an exemption from the closed captioning requirements for its video program "Time That Makes The Difference," asserting that compliance would impose an undue burden on Petitioner.¹² The Petitioner asserts that it explored incorporating a closed captioning feature into its weekly broadcast, and that adding such a feature would cause Petitioner to "cease broadcast operations."¹³ As Commenters discuss below, the Petition offers insufficient evidence to demonstrate that compliance would impose an undue burden under the four statutory

^{6/} 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f).

^{7/} *Id.*

^{8/} 47 C.F.R. § 79.1(f).

^{9/} *Id.* § 79.1(f)(2).

^{10/} *Id.* § 79.1(f)(9).

^{11/} *Id.* § 79.1(f)(3).

^{12/} Petition at p.2.

^{13/} *Id.* at p. 3.

exemption factors. The Petition therefore does not meet the legal standard for granting a request for exemption of the closed captioning rules.

A. Exemption Criteria Under Section 79.1(f)(2)

As more fully discussed below, Commenters respectfully submit that the Petition is not supported by sufficient evidence to demonstrate that compliance with the closed captioning requirements would impose an undue burden upon Petitioner as required by the statutory factors set forth under Section 79.1(f)(2) of the Commission's rules.¹⁴

First factor: The nature and cost of the closed captions. In judging the sufficiency of information filed to support a claim that the cost of implementing closed captioning will impose an undue burden, the Commission looks to whether the petitioner:

- (1) sought competitive pricing from multiple sources;
- (2) submitted copies of the correspondence received from such captioning companies, indicating a range of quotes;
- (3) provided details regarding its financial resources; and
- (4) sought any means to recoup the cost of closed captioning, such as through grants or sponsorships.¹⁵

Moreover, the Commission has determined that petitioners must make an effort to solicit captioning assistance from the distributors of its programming.¹⁶ Failure to provide the foregoing information and to establish that the Petitioner pursued other possible means of

^{14/} 47 C.F.R. § 79.1(f)(2).

^{15/} *Outland Sports, Inc., Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13605 (2001) ("*Outland Sports*") (advising that entities seeking a waiver of the captioning requirements seek cost quotes from multiple sources and provide correspondence evidencing the quotes obtained, provide detailed financial information, and discuss whether any efforts were made to recoup the cost of closed captioning). See also *The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13611 (2001) (reviewing sufficiency of information provided with respect to the four factors).

^{16/} *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3366 (1997).

gaining captioning hinders the Commission's assessment of the impact of the cost of captioning on Petitioner.¹⁷

Petitioner fails to demonstrate that it sought competitive pricing for captioning from multiple sources. Petitioner asserts that it would cost "\$305/week or \$16,000/year for captioning and encoding."¹⁸ Petitioner also asserts that this rate is the "least expensive" option for adding closed captioning to its programming.¹⁹ Petitioner then alleges that purchasing closed captioning equipment to incorporate the feature in-house at its studio would "require [Petitioner] to hire and train additional staff, adding to [its] expense."²⁰ However, beyond these unsupported assertions, Petitioner offers no documentation demonstrating that any effort to seek competitive pricing occurred. If Petitioner did seek competitive pricing from alternative captioning companies or individuals, it is unclear who those companies or individuals may be. The only evidence of any attempt to gather competitive pricing is the attachment of informal correspondence exchanged between Petitioner and the National Captioning Institute ("NCI"), and Petitioner and WABG-TV in Greenville, MS. NCI's correspondence is in the form of an email which states that captioning can be provided for between "\$300/per half-hour ...[and] \$130/per half-hour."²¹ WABG-TV's correspondence is in the form of a two line letter that states captioning "would cost \$52 per week."²² Petitioner never explains how it calculated captioning costs at \$305 per week or \$16,000 per year. Nor does Petitioner attempt to justify why the purchase of closed captioning equipment would necessitate hiring staff beyond the professional team of producers Petitioner already employs. Petitioner does not reference any other attempt to correspond with third parties beyond NCI and WABC-TV who might have been able to provide captioning at competitive

^{17/} *Outland Sports*, ¶ 7.

^{18/} *Petition* at p. 2.

^{19/} *Id.* at p. 2.

^{20/} *Id.* at p. 3.

^{21/} *Id.* at p. 23.

^{22/} *Id.* at p. 25.

rates. In sum, Petitioner has failed to demonstrate that it has sought competitive pricing from multiple sources.

Petitioner fails to submit copies of correspondence demonstrating the receipt of a range of quotes. As discussed above, Petitioner submitted informal correspondence from two parties that quote captioning costs. However, Petitioner alleges that the quotation provided by WABG-TV is a captioning service only “for broadcast on that station...”²³ Therefore, Petitioner actually only provides one quotation for a captioning service that would incorporate captions prior to distribution to the eighteen television stations that broadcast its programming. While Petitioner states that it discussed sourcing captioning from the other television stations that broadcast its programming, there is no evidence that Petitioner received any quotations to support this bare assertion. Further, there is no evidence that Petitioner received a quotation for closed captioning equipment, or for the alleged training or extra staffing that would be required to make use of such equipment. Thus, instead of providing a range of quotations, Petitioner provides only a single quotation containing costs relevant to captioning programming prior to distribution to Petitioner’s various markets.

Petitioner, moreover, did not provide sufficient information regarding the financial resources upon which it relies to produce its video program. In 2004, Petitioner generated \$540,422 in revenue and had total expenses of \$533,163.²⁴ Among the included line items in Petitioner’s expenses was \$171,511 for TV/radio production and airing production.²⁵ All other expenses also appear to be primarily related to Petitioner’s TV/radio production activities. Petitioner fails to demonstrate how incorporating a closed captioning feature into its weekly

^{23/} *Petition* at p. 2.

^{24/} *Id.* at pp. 13-14.

^{25/} *Id.* at p. 15.

broadcast would force it to “cease broadcast operations.”²⁶ Based on its robust budget, there is no evidence that incorporating closed captioning into its programming would in any way burden Petitioner’s financial resources.

Further, Petitioner fails to describe its general financial condition, and state whether it has other means to recoup the cost of captioning, such as through sponsorships or grants, or whether Petitioner solicited captioning assistance from the distributors of its programming. As to the latter, the Commission has determined that petitioners must make an effort to solicit such assistance and provide the distributor’s response to its solicitation.²⁷ Petitioner does provide a captioning quotation from one of its eighteen television broadcasters. It claims to have contacted the other seventeen broadcasters that distribute its programming, but offers no evidence. Further, there is no documentation discussing efforts to recoup the costs of captioning from other third parties who might offer assistance, notably its parent organization, the Mississippi Conference of the United Methodist Church. Without such detailed information, the Commission cannot gain an understanding of the overall resources of Petitioner or make accurate findings regarding the cost of closed captioning. As a result, the Petition provides insufficient information for the Commission to assess the impact of adding captioning upon Petitioner’s resources. Petitioner has therefore failed to provide sufficient evidence to support a claim for exemption under the first factor.

Second factor: The impact on the operation of the provider or program owner. The Petition provides no information describing the impact captioning would have on Petitioner’s operations. Petitioner claims that compliance with the closed captioning rules could “endanger

²⁶/ Petition at p. 2.

²⁷/ See *Commonwealth Productions, Video Programming Accessibility, Petitioner for Waiver of Closed Captioning Requirements*, CSR 5992, Memorandum Opinion and Order, ¶ 3 (Mar. 26, 2004).

our long history of excellence in broadcasting.”²⁸ Petitioner also states that captioning would “require *The United Methodist Hour of MS, Inc.* to discontinue our program and cease broadcast operations.”²⁹ However, Petitioner fails to provide any supporting documentation or financial analysis for these assertions. In fact, the financial statements attached to the petition demonstrate that the costs associated with captioning pose no financial threat to Petitioner. Given that such factual information has not been provided, Petitioner has not given the Commission a sufficient factual basis for assessing the impact of adding captioning upon Petitioner’s operations. As a result, the Petition provides the Commission with an insufficient basis for considering whether Petitioner’s request for exemption finds support under the second factor.

Third factor: the financial resources of the provider or program owner. Commission Rule 79.1(f)(2) provides that a petition for exemption “must be supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden.”³⁰ Additionally, in determining whether the closed captioning requirements impose an undue burden, the Commission must consider the resources that the petitioner has chosen to devote to the program in the context of the overall budget and revenues of the petitioner – and not merely the cost of captioning in relation to a particular program.³¹ Here, Petitioner has failed to provide sufficient evidence, instead relying on unsubstantiated assertions regarding the high costs of captioning and vague statements concerning production costs and income.

Beyond Petitioner’s unsubstantiated assertion that captioning would require it to “discontinue our program and cease broadcast operations,” Petitioner provides no information about how the incorporation of closed captioning in its programming would impact its financial

²⁸/ Petition at p.24.

²⁹/ *Id.* at p. 15.

³⁰/ 47 C.F.R. § 79.1(f)(2).

³¹/ *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3366 (1997) (“Report and Order”).

condition or budget.³² Petitioner offers no documentation demonstrating how closed captioning for “Time That Makes the Difference” would impose a burden on its annual budget. Petitioner is a ministry and outreach program and an institution of the Mississippi Conference of the United Methodist Church, akin to a production company, generating substantial revenue. Based on Petitioner’s own estimates, incorporation of captioning will only result in a slight increase in production costs. In sum, the enforcement of closed captioning requirements creates no burden for the Petitioner.

Fourth factor: The type of operation of the provider or program owner. Petitioner provides insufficient information regarding the type of operations that it runs. In order for the Commission to determine whether the Petition is supported under the fourth factor, Petitioner should have provided detailed information regarding its operations and explained why or how complying with the closed captioning requirements would result in significant difficulty for Petitioner because of the type of operations involved. Petitioner fails to explain why the nature and/or specific attributes of its operations provides a basis to exempt it from the captioning rules. Lacking such information, the Petition fails to demonstrate that an exemption is warranted under the fourth factor.

B. Exemption Criteria Under Section 79.1(d)(11)

Petitioner also argues that it is exempt from closed captioning requirements because expenses related to captioning would allegedly exceed 2% of Petitioner’s gross revenue.³³ However, Petitioner incorrectly interprets the law. The exemption crafted in Section 79.1(d)(11) applies to the owners of broadcast television channels, or the owners or operators of other transmission networks providing carriage to the home for such channels, not individual video producers.

^{32/} Petition at p. 2.

Section 79.1(d)(11) provides as follows:

No video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2% of the gross revenues received from that *channel* during the previous year.³⁴

Section 79.1(d)(11) applies to entities that are required to caption a channel of video programming in order to meet the captioning benchmarks established by the Commission.³⁵ The entities that are responsible for meeting the benchmarks are video programming distributors, which include television broadcast stations, multi-channel video programming distributors and other entities that directly distribute video programming to residential homes.³⁶ Pursuant to the rule, these entities are not required to caption any channel of video programming if captioning expenses would exceed 2% of the gross revenue generated by that channel during the previous calendar year. Although not required to expend any money to caption a channel with such revenues, the video programming distributor remains obligated to pass through video programming that is already captioned. Commenters, therefore, respectfully submit that Petitioner has failed to establish that it qualifies for an exemption from the captioning requirements under Section 79.1(d)(11). The United Methodist Hour of MS, Inc. is the maker of an individual video program, and not the owner of the television broadcasters or cable operators whose channels it distributes its program through. Thus, it does not qualify for the exemption set forth in 79.1(d)(11).

^{33/} *Id.* at p. 1.

^{34/} 47 C.F.R. §§ 79.1(d)(9)(11).

^{35/} Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility. 13 FCC Rcd 3272, 3350 (1997) (“Order”).

^{36/} *Id.* at 3280, 3286 (adopting benchmarks specified as a number of hours of required captioning and placing responsibility for compliance with benchmarks on video programming distributors). See also 47 C.F.R. § 79.1(a)(2) (defining the term “video programming distributor”).

IV. CONCLUSION

For those reasons, Petitioner's request for exemption from the closed captioning requirements is not supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden within the meaning of Section 713 of the Act.

Furthermore, the Petitioner does not qualify for an exemption from the captioning requirements under Section 79.1(d)(11).

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WHEREFORE, for the foregoing reasons, Commenters respectfully oppose grant of the
Petition.


Respectfully submitted,

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Dated: February 9, 2006


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CERTIFICATION

I, Claude L. Stout, Executive Director of Telecommunications for the Deaf and Hard of Hearing, Inc., and a joint commenter in the attached Opposition To The Petition For Exemption From Closed Captioning Requirements Filed By United Methodist Hour Of Ms. Inc., File No. CGB-CC-0042 ("*Opposition*"), hereby certify that to the extent there are any facts or considerations not already in the public domain which have been relied on in this *Opposition*, these facts and considerations are true and accurate to the best of my knowledge.



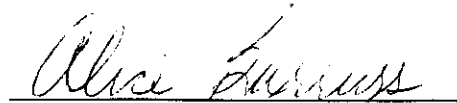
Claude L. Stout
Executive Director

Date: February 8, 2006

CERTIFICATE OF SERVICE

I, Alice Burruss, do hereby certify that, on February 9, 2006, a copy of the foregoing Opposition of Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing Consumer Advocacy Network, and the Hearing Loss Association of America People to the Petition for Exemption from Closed Captioning Requirements Filed by the United Methodist Hour of MS, Inc., as filed with the Federal Communications Commission in CGB-CC-0042, was served by first class U.S. mail, postage prepaid, upon the Petitioner:

Reverend Eddie Rester
Executive Director/Preacher
United Methodist Hour
1604 S. 28th Avenue
P.O. Box 16657
Hattiesburg, MS 39404-6657

A handwritten signature in cursive script, reading "Alice Burruss", is written over a horizontal line.